IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 742/2005
IN
WRIT PETITION NO. 76/2002

M/s. Timblo Pvt. Ltd. ..... Applicant.

V/s.

Neonita D'Costa and others. ..... Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Miss. K. Sambari, Advocate for the applicant.

Ms. Norma Alvares, Advocate for the respondent No.1, 2, 3 and 4.

Mr. S. S. Kantak, Advocate General with Ms. W. Coutinho, Government Advocate for the respondents No.5, 6, 7 and 8.

Mr. H. D. Naik, Advocate for the respondent No.9.

Mr. Sudesh Usgaonkar, Advocate for the respondent No.10.

CORAM : R.M. LODHA &
N.A. BRITTO, JJ.

DATE : 11TH OCTOBER, 2005.

P.C.

We heard Mr. S.D. Lotlikar, the learned Senior Counsel for the applicant (original respondent No.7), Ms. Norma Alvares, the learned Counsel for the respondents No.1 to 4 (original petitioners) and Mr. S. S. Kantak, the learned Advocate General for the respondents No.5, 6, 7 and 8 (original respondents No.1 to 4).

2. We perused the Order of this Court dated 30/07/2002. We also perused the the Judgment of the Supreme Court in the case of **Noise Pollution (V), in RE,** (2005) 5 SCC 733. In the aforesaid backdrop, we considered the order dated 30/09/2005 of the Chairman of the Committee constituted by this Court as per afore-referred Order dated 30.7.2002.

3. Before us nothing has been shown that the applicant has breached the conditions imposed by the Committee while granting permission of loading and/or unloading between 10 p.m. and 6 a.m. There is also nothing on record to indicate that the action of loading and/or unloading of mineral ore by the applicant is in excess of decibel levels prescribed under the Environment (Protection) Act, 1986 Noise Pollution (Control) Rules, 2000.

4. The report of Terra Firma that has been annexed in the companion Miscellaneous Civil Application No.743/05 also does not show that at any point of time, the ambient noise levels from loading and/or unloading exceeded the decibel levels prescribed under the Act of 1986 and the Rules of 2000.

5. However, the learned Counsel for the respondents No.1 to 4 (original petitioners) submitted that the determination of ambient noise levels by Terra Firma is not proper as monitoring of noise level

is not being done at source (the site where the loading and unloading takes place). The contention of the learned Counsel for the respondents No.1 to 4 (original petitioners), we find, gets controverted from the letter dated 9.12.2002 sent by Terra Firma to the District Magistrate wherein it is recorded that source noise level measurement is not appropriate method for determination of Ambient Noise Levels and such data will not be comparable with the standards laid down under the Environment (Protection) Act, 1986. According to the said communication, for determination of Ambient Noise Levels for which standards are laid down under the Environment (Protection) Act, 1986, noise level measurement is conducted at the receptor location and/or beyond the premises limits of the operations. Nothing contrary has been shown by the learned Counsel for the respondents No.1 to 4 (original petitioners) to us. Be that as it may, we keep this aspect open to be considered by the Committee constituted by this Court.

6. We are informed that all along after the order dated 30th July, 2002 came to be passed by this Court, the Committee had been granting permission for carrying out the loading and/or unloading activities between 10 p.m. and 6 a.m. on the conditions imposed by the Committee including that the monitoring is done by M/s. Terra Firma. But, all of a sudden, by Order dated 30/09/2005 the applicant has been informed that no further permission shall be granted. The

order dated 30/09/2005 does not disclose any reason. The learned Counsel for the respondents No.1 to 4 (original petitioner) conceded, and in our view fairly, that the Judgment of the Supreme Court in **Noise Pollution (V), in RE, (supra)** has not put any blanket ban to the industrial or commercial activity being carried out between 10 p.m. and 6 a.m. What the Supreme Court has emphasized is that right to live in freedom from noise pollution as fundamental right is protected by Article 21 of the Constitution of India and pollution beyond permissible limits is an inroad into that right. Obviously, the activity of loading and unloading at Capxem/Digas, Ponda between 10 p.m. and 6 a.m. cannot be permitted to breach the decibel levels prescribed under the Environment (Protection) Act, 1986 and the Noise Pollution (Control) Rules, 2000 and the said decibel levels have to be maintained at all cost.

7. Keeping these aspects into consideration, we are of the view that the order dated 30.9.2005 passed by the Chairman of the Committee constituted by this Court under the afore-noted order cannot be sustained and has to be quashed and the matter needs to be reconsidered as per Order dated 30.7.2002 passed by this Court.

8. If the monitoring by M/s. Terra Firma is not proper, we grant liberty to the respondents No.1 to 4 (original petitioners) to bring those deficiencies in monitoring to the notice of the committee

so that these aspects are properly considered at the time of consideration of the application made by the applicant for permission to carry out loading and/or unloading operations between 10 p.m. and 6 a.m.

9. We, accordingly, dispose of this application by the following order :

(i) The order dated 30.09.2005 passed by the Chairman of the Committee constituted by this Court under the Order dated 30th July, 2002 is quashed and set aside.

(ii) The Committee is directed to consider the application for permission made by the present applicant for carrying out loading and/or unloading operations between 10 p.m. and 6 a.m. as per order dated 30th July, 2002 and in accordance with law.

(iii) As requested by the Advocate for the respondents No.1 to 4 (original petitioners), in place of Mr. K. G. Sadhale, Mr. Antonio D'Souza, resident of Gaura Vaddo, Calangute, Bardez, Goa, is appointed as Member of the Committee and the Committee shall be treated as reconstituted accordingly.

(iv) We record and accept the statement made by the learned Advocate General that now, positively, by the end of 10th December, 2005, the State Government shall pass the

necessary order classifying the area in question into the categories as required under the Environment (Protection) Act, 1986 and the Noise Pollution (Control) Rules, 2000.

Parties will be provided ordinary copy of this order, duly authenticated by the Court Sheristedar on payment of usual copying charges.

R.M. LODHA, J.

N.A. BRITTO, J.

ssm.